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INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of August 1, 1973

between

MISSOURI PACIFIC RAILROAD COMPANY,
Lessee

and

**HAROLD K. CRISWELL, CLAUDE S. BRAVMANN and
WELDON J. SMITH, as Trustees under a Trust Agreement dated
as of August 1, 1973 with SECURITY PACIFIC LEASING
CORPORATION, as Trustor,**

Lessor

LEASE OF RAILROAD EQUIPMENT dated as of August 1, 1973, between MISSOURI PACIFIC RAILROAD COMPANY, a Missouri corporation (hereinafter called the Lessee), and HAROLD K. CRISWELL, CLAUDE S. BRAVMANN and WELDON J. SMITH, as Trustees (hereinafter called the Lessor), under a Trust Agreement dated as of August 1, 1973 with SECURITY PACIFIC LEASING CORPORATION.

WHEREAS, the Lessor and the Lessee have entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Security Documents), with GENERAL MOTORS CORPORATION (Electro-Motive Division) (hereinafter called the Builder), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the railroad equipment described in Schedule A hereto;

WHEREAS, the Builder has assigned or will assign its interest in the Security Documents to WELLS FARGO BANK, N. A., as Agent (hereinafter, together with its successors and assigns, referred to as the Vendor);

WHEREAS, the Lessor has assigned or will assign its interest in this Lease to the Vendor pursuant to a Collateral Assignment of Lease and Agreement in the form annexed hereto; and

WHEREAS, the lessee desires to lease all the units of said equipment, or such lesser number (hereinafter called the Units) as are delivered and accepted and settled for under the Security Documents on or prior to October 10, 1973 (hereinafter called the Cut-Off Date), at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee hereunder or under the Security Documents, subject to all the rights and remedies of the Vendor under the Security Documents:

§ 1. *Incorporation of Model Provisions.* Whenever this Lease incorporates herein by reference, in whole or in part or as hereby amended, any provision of the document entitled "Model Lease Provisions" annexed to the Security Documents as Part II of Annex C thereto (hereinafter called the Model Lease Provisions), such provision of the Model Lease Provisions shall be deemed to be a part of this instrument as fully to all intents and purposes as though such provision had been set forth in full in this Lease.

§ 2. *Delivery and Acceptance of Units.* § 2 of the Model Lease Provisions is herein incorporated as § 2 hereof.

§ 3. *Rentals.* The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease (i) for the period from the date of delivery and acceptance of such Unit to October 15, 1973, an amount equal to .024213778% of the Purchase Price (as defined in the Security Documents) of each Unit for each day elapsed from the date of delivery and acceptance of such Unit to and including October 14, 1973, due and payable on October 15, 1973, and (ii) through the balance of the lease term remaining after the period described in (i) above, payable in arrears in 62 equal quarterly instalments on January 15, April 15, July 15 and October 15 in each year commencing with January 15, 1974, an amount equal to 2.17924% of the Purchase Price of each such Unit.

The Lessor irrevocably instructs the Lessee to make, and the Lessee agrees to make, all the payments provided for in this Lease in immediately available funds (including but not limited to the payments required under § 7 hereof) for the account of the Lessor, c/o Wells Fargo Bank, N.A., 475 Sansome Street, San Francisco, California on or before 11 o'clock a. m. San Francisco time on the date upon which payments are due and payable. Such payments shall be applied by the Vendor to satisfy the obligations of the Lessor under the Security Documents (to the extent provided in accordance with the last paragraph of Article 4 thereof) and, so long as no event of default under the Security Documents shall have occurred and be continuing, any balance shall be paid to the Lessor.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the Security Documents, including the Lessee's rights by subrogation under Article 8 thereof, or the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or

entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency, bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 4. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final quarterly payment of rent in respect thereof is due pursuant to § 3.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, or under the Security Documents in its capacity as Guarantor or otherwise, are subject to the rights of the Vendor under the Security Documents. If an event of default should occur under the Security Documents, the Vendor may terminate this Lease (or rescind its termination), all as provided therein, unless the Lessee is not so in default under this Lease or under the Security Documents.

§ 5. *Identification Marks.* § 5 of the Model Lease Provisions is herein incorporated as § 5 hereof.

§ 6. *Taxes.* § 6 of the Model Lease Provisions is herein incorporated as § 6 hereof.

§ 7. *Payment for Casualty Occurrences; Insurance.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessor or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term

of this Lease, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice (but not prior to January 15, 1974), the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit.

The Casualty Value of each Unit as of any rental payment date shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite such rental payment date:

<u>Rental Payment Date</u>	<u>Percentage</u>	<u>Rental Payment Date</u>	<u>Percentage</u>
1/15/74	102.8867	10/15/81	63.2941
4/15/74	102.7501	1/15/82	62.0121
7/15/74	102.6996	4/15/82	60.6757
10/15/74	102.5486	7/15/82	59.4053
1/15/75	102.3155	10/15/82	58.0771
4/15/75	101.9987	1/15/83	56.6900
7/15/75	101.6885	4/15/83	55.2427
10/15/75	101.2870	7/15/83	53.8683
1/15/76	100.8089	10/15/83	52.4314
4/15/76	100.2527	1/15/84	50.9308
7/15/76	99.7107	4/15/84	49.3652
10/15/76	99.0824	7/15/84	47.8866
1/15/77	93.2227	10/15/84	46.3792
4/15/77	92.4445	1/15/85	44.8426
7/15/77	91.6865	4/15/85	43.2761
10/15/77	90.8473	7/15/85	41.7526
1/15/78	89.9366	10/15/85	40.1979
4/15/78	88.9607	1/15/86	38.6116
7/15/78	88.0271	4/15/86	36.9929
10/15/78	87.0517	7/15/86	35.4205
1/15/79	80.8751	10/15/86	33.8145
4/15/79	79.8139	1/15/87	32.1742
7/15/79	78.8056	4/15/87	30.4988
10/15/79	77.7523	7/15/87	28.8735
1/15/80	76.6530	10/15/87	27.2118
4/15/80	75.5070	1/15/88	25.5128
7/15/80	74.4181	4/15/88	23.7760
10/15/80	73.2805	7/15/88	22.0932
1/15/81	66.9362	10/15/88	20.3709
4/15/81	65.6987	1/15/89	18.6084
7/15/81	64.5226	4/15/89	16.8048

and
thereafter

Except as hereinabove in this §7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Lessee on equipment owned by it and the benefits thereof shall be payable as provided in the Security Documents. The Lessee may effect such insurance through self-insurance; *provided, however*, in the event that the Lessor at any time concludes that such self-insurance does not provide adequate assurance against such risks, the Lessor may require the Lessee to maintain such insurance with a reputable insurer. Any net insurance proceeds as the result of insurance carried by the Lessee received by the Lessor in respect of Units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this §7. If the Lessor shall receive any such net insurance proceeds or condemnation payments after the Lessee shall have made payments pursuant to this §7 without deduction for such net insurance proceeds or such condemnation payments, the Lessor shall pay such proceeds to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds shall remain the property of the Lessor.

§ 8. *Annual Reports.* § 8 of the Model Lease Provisions is herein incorporated as § 8 hereof. The Lessee will also furnish to the Lessor or its assigns (a) as soon as available and in any event within 60 days after the end of each quarterly period, except the last, of each fiscal year, a balance sheet of the Lessee as at the end of such period and a statement of income and retained earnings of the Lessee for the period beginning on the first day of such fiscal year and ending on the date of such balance sheet, all in reasonable detail and certified by the chief financial officer of the Lessee, and (b) as soon as available and in any event within 120 days after the last day of each fiscal year, a copy of the Lessee's annual report, including a balance sheet, income statement and statement of retained earnings of the Lessee, certified by a firm of independent public accountants of recognized standing, covering the operations of the Lessee.

§ 9. *Disclaimer of Warranties; Compliance with Documents and Rules; Maintenance; and Indemnification.* § 9 of the Model Lease Provisions is hereby amended by adding the words "or the Lessor's title thereto," after the word "hereunder" in the first sentence thereof and by adding the following sentence to the end of the third paragraph thereof: "The Lessee shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear." § 9 of the Model Lease Provisions, as so amended, is herein incorporated as § 9 hereof.

§ 10. *Default.* If, during the continuance of this Lease, one or more of the following events (each such event being hereinafter sometimes called an Event of Default) shall occur:

A. default shall be made in payment of any part of the rental provided in § 3 hereof, or default shall be made in payment of any part of the rental provided in the Lease of Railroad Equipment dated as of May 15, 1973, between the Lessee and Harold K. Criswell, Claude S. Bravmann and Weldon J. Smith, as Trustees under a Trust Agreement dated as of May 15, 1973, with Gould Leasing, Inc. (hereinafter called the Other Lease), and such default shall continue for five days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Security Documents, or in the Other Lease or in the Security Documents referred to therein, and such default shall continue for 30 days after written notice from the Lessor, or the Lessor under the Other Lease, to the Lessee specifying the default and demanding that the same be remedied;

D. any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or under the Security Documents under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extension (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Security Documents), and, unless such proceedings shall

have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and under the Security Documents shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Security Documents and this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including net after tax losses of Federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and

enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on a basis of a rate of 3.70% per annum, discount, compounded quarterly, from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental, and (iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States of America or any political subdivision thereof, calculated on the assumption that the Lessor's Federal, state and local taxes computed by reference to net income or excess profits are based on a 48% effective Federal tax rate and the highest effective state and local income tax and/or excess profit tax rates generally applicable to the Lessor, including therein the effect of any applicable surtax, surcharge and/or other tax or charge related thereto, and deducting from any such Federal tax 48% of the amount of any such state and local tax (such rates as so calculated being hereinafter in this Agreement called the Assumed Rates) shall be equal to the following:

- (A) an amount equal to any portion of the 7% investment credit with respect to the Purchase Price of the Units as provided in Section

38 and related Sections of the Internal Revenue Code of 1954, as amended (hereinafter called the Investment Credit), lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 17 or any other provision of the Lease or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default; plus

(B) such sum as, in the reasonable opinion of the Lessor, will cause the Lessor's net return (taxes being calculated at the Assumed Rates) under this Lease to be equal to the net return (taxes being calculated at the Assumed Rates) that would have been available to the Lessor if the Lessor had been entitled to take a deduction (hereinafter called the Class Life Deduction) in respect of the depreciation of each Unit over a 12-year life down to a net depreciated value equal to 0% of the Purchase Price under regulation 1.167(a)-(11) under Section 167(m) of the Internal Revenue Code of 1954, as amended, which Class Life Deduction was lost, not claimed, not available for claim, disallowed or recaptured in respect of a Unit as a result of (i) the breach of one or more of the representations, warranties and covenants made by the Lessee in § 17 or any other provision of this Lease, or (ii) the termination of this Lease, the Lessor's loss of the right to use such Unit, or (iii) any action or inaction by the Lessor or (iv) the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default; plus

(C) an amount equal to the difference between (i) the taxes which will be imposed upon the Lessor at the Assumed Rates in the event that the amount realized by the Lessor upon a taxable disposition of Lessor's interest in such Unit of Equipment after the occurrence of an Event of Default exceeds the Lessor's adjusted basis in such Unit of Equipment, (ii) less any cash received by the Lessor by reason of such taxable disposition of the Lessor's interest in such Unit of Equipment; plus

(D) an amount equal to the interest and penalty assessed against the Lessor by the United States based on disallowance in whole or in part for any taxable year of the Investment Credit

contemplated in paragraph (A) above or the Class Life Deduction contemplated in paragraph (B) above.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 11. *Return of Units Upon Default.* § 11 of the Model Lease Provisions is herein incorporated as § 11 hereof.

§ 12. *Assignment; Possession and Use.* § 12 of the Model Lease Provisions is hereby amended by deleting the proviso contained in the third paragraph thereof and by substituting the following proviso:

“*provided, however, at no time throughout the term of this Lease shall any Unit be located outside the United States of America.*”

§ 12 of the Model Lease Provisions, as so amended, is herein incorporated as § 12 hereof.

§ 13. *Purchase and Renewal Options.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term of this Lease or any extended term hereof, as the case may be, elect (a) to extend the term of this Lease in respect of any or all of such Units then covered by this Lease, for one additional five-year period commencing on the scheduled expiration of the original term of this Lease at a “Fair Market Rental” payable in 20 quarterly payments on January 15, April 15, July 15 and October 15 in each year, commencing three months after the final quarterly rental payment for the original term is due and (b) to purchase all, but not fewer than all, the

Units then covered by this Lease at the end of the original or any extended term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term.

Fair Rental Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or before four months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Rental Value of the Units, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor may select with the approval of the Lessee, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fees of the Appraiser shall be borne by the Lessee.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or before four months prior to the expiration of the original term of this Lease or, in case of an extension thereof, the extended term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor may select with the approval of the Lessee, or failing such agreement, a panel of three independent appraisers,

one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

Upon payment of the purchase price on the date of the expiration of the original term or, in the case of an extension thereof, the extended term of this lease, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties except that such Units are free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under the Lessor) for such Units, and such other documents as may be required to release such Units from the terms and scope of this Lease and to transfer title thereto to the Lessee or such assignee or nominee, in such form as may reasonably be requested by the Lessee, all at the Lessee's expense.

§ 14. Return of Units upon Expiration of Term. § 14 of the Model Lease Provisions is herein incorporated as § 14 hereof.

§ 15. Opinion of Counsel. § 15 of the Model Lease Provisions is hereby amended by adding the words "any law, any order of any court or any governmental agency," following "under," in subparagraph E thereof. § 15 of the Model Lease Provisions, as so amended, is herein incorporated as § 15 hereof.

§ 16. Recording; Expenses. § 16 of the Model Lease Provisions is herein incorporated as § 16 hereof.

§ 17. Federal Income Taxes. Lessee represents, warrants and agrees that the Lessor, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended from time to time, and the regulations thereunder (hereinafter called the Code) to an owner of property, including (without limitation) the Investment Credit and the Class Life Deduction (as defined in § 10 of this Lease), with respect to the Units and the Lessor shall be entitled to deductions for any interest payments made pursuant to the Security Documents.

Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof. Lessee agrees to keep and make available for inspection and copying by Lessor such records as will enable Lessor to determine whether it is entitled to the full benefit of the Investment Credit and the Class Life Deduction with respect to the Units.

Lessee represents, warrants and agrees that (i) none of the Units constitutes property the construction, reconstruction or erection of which was begun before April 1, 1971; (ii) at the time Lessor becomes the owner of the Units, the Units will constitute "new section 38 property" within the meaning of Section 48(b) of the Code and will not have been used by any person so as to preclude "the original use of such property" within the meaning of Section 167(c)(2) of the Code from commencing with Lessor; (iii) at all times during the term of this Lease, each Unit will constitute "Section 38 property" within the meaning of Section 48(a) of the Code; and (iv) at the time Lessor becomes the owner of the Units, and at all times during the term of this Lease, each Unit will constitute property eligible for the Class Life Deduction.

In the event an investment credit of 7% on the full Purchase Price of each Unit is disallowed in whole or in part by the United States, then, the rental payments provided in § 3 hereof shall be increased to the extent necessary in the reasonable opinion of the Lessor to cause the Lessor's net return (taxes being calculated at the Assumed Rates) under this Lease to be equal to the net return (taxes being calculated at the Assumed Rates) that would have been available to the Lessor if the 7% investment credit had been allowed in full. In the event that the Lessor shall not be permitted to depreciate the Equipment down to zero percent of 100 percent of the Purchase Price thereof over a 12-year life, then the fixed rental provided for in § 3 hereof shall be increased to the extent necessary in the reasonable opinion of the Lessor to cause the Lessor's net return (taxes being calculated at the Assumed Rates) under this Lease to be equal to the net return (taxes being calculated at the Assumed Rates) that would have been available to the Lessor if it had been allowed to so depreciate the Equipment over a 12-year life period.

§ 18. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 10% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 19. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

(a) if to the Lessor, at c/o Matrix Leasing International, Inc., Bank of America Center, San Francisco, California 94104, with a copy to Security Pacific Leasing Corporation, One Embarcadero Plaza, San Francisco, California 94111,

(b) if to the Lessee, at 210 North Thirteenth Street, St. Louis, Missouri 63103

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 20. *Severability; Effect and Modification of Lease.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and of the Lessee.

§ 21. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of August 1, 1973, for convenience, the

actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 22. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of California, *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

§ 23. *Advances.* If the Lessee shall fail to comply with any of its covenants herein contained, the Lessor may, but shall not be obligated to, make advances to perform the same and to take all such action as in the Lessor's opinion may be necessary to obtain such performance. All payments so made by the Lessor and all costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred in connection therewith shall be payable by the Lessee to the Lessor upon demand as additional rent hereunder, with interest at the rate of 10% per annum.

§ 24. *Limitation of Liability.* It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that no liability or responsibility in their respective individual capacities is assumed by nor shall at any time be asserted or enforceable against Harold K. Criswell, Claude S. Bravmann or Weldon J. Smith on account of this Lease or on account of any representation, covenant, undertaking or agreement of the Lessor in this Lease contained, either expressed or implied, all such individual liability, if any, being expressly waived and released by the Lessee herein and by all persons claiming by, through or under the Lessee; excepting, however, that the Lessee or any person claiming by, through or under it, making claim hereunder, may look to the Trust Estate under the Trust Agreement referred to in the first paragraph hereof for satisfaction of the same.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

.....
~~Harold K. Criswell, as Trustee~~

Claude S. Braymann

Claude S. Braymann, as Trustee *on behalf of the Trust*
under that certain Trust Agreement dtd
8-1-73 with Security Pacific Lending Corp.

.....
~~Weldon J. Smith, as Trustee~~

MISSOURI PACIFIC RAILROAD COMPANY,

by *M. M. Kennedy*

Vice President

[CORPORATE SEAL]

Attest:

[Signature]

Assistant Secretary

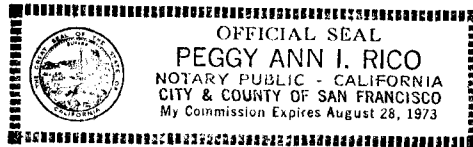
STATE OF CALIFORNIA
City+ COUNTY OF SAN FRANCISCO } SS.:

On this 10th day of August, 1973, before me personally appeared ~~HAROLD K. CRISWELL~~, CLAUDE S. BRAVMANN and ~~WELDON J. SMITH~~, Trustees under a Trust Agreement dated as of August 1, 1973, with SECURITY PACIFIC LEASING CORPORATION, signers of the foregoing instrument, and they acknowledged the same to be their free act and deed, as such Trustees, before me.

Peggy Ann I. Rico
 Notary Public

[NOTARIAL SEAL]

My commission expires



STATE OF MISSOURI
 CITY OF ST. LOUIS } SS.:

On this 10th day of August, 1973, before me personally appeared M. M. HENNELLY to me personally known, who, being by me duly sworn, says that he is a Vice President of MISSOURI PACIFIC RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

R. C. Mason
 Notary Public

[NOTARIAL SEAL]

R. C. MASON
 NOTARY PUBLIC, CITY OF ST. LOUIS, MO.

My Commission Expires Sept. 28, 1974

**Schedule A
to Lease**

<u>Type</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
-40-2 3000 H.P. EMD Locomotives	No. 8087-3	La Grange, Illinois	5	790-794 Inclusive	\$317,585	\$1,587,925	Prior to Octo- ber 10, 1973 at McCook, Illinois
-40-2 3000 H.P. EMD Locomotives	No. 8087	La Grange, Illinois	20	795-814 Inclusive	324,860	6,497,200	Prior to Octo- ber 10, 1973 at McCook, Illinois

**Annex to
the Lease**

COLLATERAL ASSIGNMENT OF LEASE AND AGREEMENT dated as of August 1, 1973 (hereinafter called "this Assignment"), by and between HAROLD K. CRISWELL, CLAUDE S. BRAVMANN and WELDON J. SMITH, as Trustees under a Trust Agreement dated as of August 1, 1973 with Security Pacific Leasing Corporation, (such Trustees being hereinafter called the Lessor or the Vendee) and WELLS FARGO BANK, N.A., as Agent under a Finance Agreement dated the date hereof (hereinafter called the Vendor).

WHEREAS, the Vendee and MISSOURI PACIFIC RAILROAD COMPANY (hereinafter called the Guarantor) are entering into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Security Documents), with GENERAL MOTORS CORPORATION (Electro-Motive Division) (hereinafter called the Builder) providing for the sale to the Vendee of such units of railroad equipment (hereinafter called the Units) described in Schedule A thereto as are delivered to and accepted by the Vendee thereunder; and

WHEREAS, the Lessor and the Guarantor have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease), providing for the leasing by the Lessor to the Railroad of the Units; and

WHEREAS, in order to provide security for the obligations of the Lessor under the Security Documents and as an inducement to the Vendor to invest in the Conditional Sale Indebtedness (as that term is defined in the Security Documents), the Lessor has agreed to assign for security purposes its rights in, to and under the Lease to the Vendor;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. Subject to the provisions of Paragraph 11 hereof, the Lessor hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the Lessor's obligations under the Security Documents, all the Lessor's right, title and interest, powers, privileges, and other benefits under the Lease, including, without limitation, the immediate right to receive and collect all rentals,

profits and other sums payable to or receivable by the Lessor from the Guarantor under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or the name of its nominee, or in the name of the Lessor or as its attorney, to ask, demand, sue for, collect and receive any and all sums to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Guarantor with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Guarantor for the account of the Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Lessor under the Security Documents, subject to the limitations contained in the last paragraph of Article 4 of the Conditional Sale Agreement, and any balance shall be paid within five business days to and retained by the Lessor, and if the Vendor shall not receive any rental payment under the first paragraph of Section 3 of the Lease when due, the Vendor shall notify the Lessor (with a copy to Security Pacific Leasing Corporation) at the addresses set forth in the Lease.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Lessor under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to the Guarantor shall be and remain enforceable by the Guarantor, its successors and assigns, against, and only against, the Lessor or persons other than the Vendor.

3. To protect the security afforded by this Assignment the Lessor agrees as follows:

(a) The Lessor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease

provides are to be performed by the Lessor; without the written consent of the Vendor, the Lessor will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Guarantor thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Guarantor, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Lessor agrees that any amendment, modification or termination thereof without such consent shall be void.

(b) At the Lessor's sole cost and expense, the Lessor will appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the obligations, duties or liabilities of the Lessor under the Lease.

(c) Should the Lessor fail to make any payment or to do any act which this Assignment requires the Lessor to make or do, then the Vendor, but without obligation so to do, after first making written demand upon the Lessor and affording the Lessor a reasonable period of time within which to make such payment or do such act, but without releasing the Lessor from any obligation hereunder, may make or do the same in such manner and to such extent as the Vendor may deem necessary to protect the security hereof, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Vendor, and also the right to perform and discharge each and every obligation, covenant and agreement of the Lessor contained in the Lease; and in exercising any such powers, the Vendor may pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees, and the Lessor will reimburse the Vendor for such costs, expenses and fees.

4. The Lessor does hereby constitute the Vendor the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become

entitled, to enforce compliance by the Guarantor with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Guarantor's and the Lessor's obligations under the Security Documents, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor.

6. The Lessor will, on each Closing Date (as defined in the Security Documents) furnish the Vendor with an opinion of counsel that this Collateral Assignment has been duly authorized, executed and delivered by the Lessor and is a legal and valid agreement binding on the Lessor.

7. The Lessor will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Vendor in order to confirm or further assure, the interests of the Vendor hereunder.

8. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

9. This Assignment shall be governed by the laws of the State of California, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

10. The Lessor shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor at its address set forth in Article 22 of the Security Documents, or at such other address as the Vendor shall designate.

11. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as no Event of Default under the Lease or no event of default under the Security Documents has occurred and is then continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits assigned and transferred by the Lessor to the Vendor by this Assignment, except the right to apply the Payments as provided in Paragraph 1 hereof.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

WELLS FARGO BANK, N.A.
as Agent

[CORPORATE SEAL]

By
Trust Officer

By
Assistant Secretary

Attest:

.....
Assistant Secretary

.....
Harold K. Criswell, as Trustee

.....
Claude S. Bravmann, as Trustee

.....
Weldon J. Smith, as Trustee

My commission expires

My commission expires

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Collateral Assignment of Lease and Agreement is hereby acknowledged as of August 1, 1973.

MISSOURI PACIFIC RAILROAD COMPANY,

By.....
Vice President